IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 734 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

and

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

DEVCHANDBHAI LAXMANBHAI MALI

Appearance:

Mr. K.P. Raval APP for appellant.

MR KS JHAVERI for Respondent No. 1

CORAM : MR.JUSTICE M.H.KADRI

and

MR.JUSTICE H.R.SHELAT

Date of decision: 09/11/2000

ORAL JUDGEMENT

(Per : MR.JUSTICE H.R.SHELAT)

The respondent and three others were placed on

trial in the Court of Sessions, Banaskantha District at Palanpur in Sessions Case No. 106 of 1988 in connection with the offence punishable under Section 17 read with Sec. 29 of the Narcotic Drugs & Psychotropic Substances Act (for short "the Act") and came to be acquitted of the same on 18th August 1989. The State has feeling aggrieved by the order of acquittal preferred this appeal.

2. Necessary facts, leading the appellant to prefer the appeal, may in brief be stated. Mr. Khant was serving as the Police Sub-Inspector at Tharad, a Taluka Centre in Banaskantha district in December 1987. On 28th December 1987 he received an information that a man of a particular description, (the description of which was given to him) had brought the opium with him and was sitting at the Tharad S.T. Bus Stand. On receipt of such information, Mr. Khant summoned the panchas and apprised them about the raid to be carried out. Thereafter the panchas, PSI Khant, 2nd PSI Mr. Bhadoria and other head-constables went to the ST Bus Stand by a jeep. The respondent was found sitting near the Sherdi Rus Centre. He was found to be the same person the description of which was given to the Police Inspector. He was then cordoned and thereafter the bag which was in his possession was searched wherefrom 600 grams of opium was found for which he was having neither licence nor any permit. The Police Officer then could see that the respondent had committed the offence punishable under Section 17 r.w. Sec. 29 of the Act. He was then arrested and was taken to the police station. A complaint was then lodged against the respondent No.1 and investigation was then taken on hand. During the course of investigation it was also revealed that other three persons were also involved in the wrong done by the respondent. They were also arrested during the course of the investigation. At the conclusion of the investigation the chargesheet against the respondent and 3 others namely (1) Bhikhabhai Jivaji Rajput, (2) Vihaji Savji Rajput and (3) Mafatlal Dhudalal Vankar was filed in the Court of Sessions at Palanpur which was then registered as Sessions Case No. 106 of 1988. The same was assigned to the then learned Additional Sessions Judge for hearing and disposal in accordance with law. The Charge at Ex.8 was then framed against the respondent and three others hearing the parties to which the respondent and three others pleaded not guilty and claimed to be tried. The prosecution then led necessary evidence to establish the charge levelled against the respondent and three others. Appreciating the evidence on record the then learned Additional Sessions Judge

reached the conclusion that the prosecution had failed to establish the charge in accordance with law. He therefore acquitted all the 4 accused of the offences with which they were charged. It is against that order of acquittal, the present appeal is filed by the prosecution calling in question the legality and validity thereof.

3. It may be stated that at the time of admission hearing, the Court did not admit this appeal so far as it relates to rest of the three accused. The appeal was admitted so far as it relates to the respondent No.1. We will therefore consider the case qua the respondent No.1.

4. Assailing the order of acquittal, Mr. Raval, the learned APP has taken us to the entire evidence on record and has submitted that the learned Judge did not appreciate the evidence on record rightly. The evidence of Mr. Khant is erroneously overlooked and other evidence was unjustly discarded which resulted into miscarriage of justice. In the case on hand Sec. 30 of the Act was not attracted. The trial Court ought to have convicted the respondent. It may be mentioned that it is not necessary to dwell upon the different grounds raised by the learned APP while assailing the order as the appeal fails on one ground although other grounds raised may find favour, and respondent-accused may not be able to effectively meet with the same as the position of law being discouraging to his contentions. We will therefore deal with the only point going to the root of the case.

5. On the charge being proved under the Act the Court has to inflict heavy punishment. When that is so the provisions of the Act are to be strictly followed by the concerned authorities. Infirm compliance of the applicable provision must be held to be fatal to the prosecution; and of course non-compliance too. As per Sec.42 of the Act, the Police Officer receiving the information about the commission of the offence under the Act, has to take down that information in writing and send a copy thereof to his immediate superior officer. If that is not done, it would vitiate the search and recovery made would cause prejudice to the accused because the accused will have no chance to know what was the original information and whether some thing unusual has been done ? He will have nothing to comment and decide about his defence available in law. The accused in that case will be entitled to acquittal. This is what is made clear by the Supreme Court in the case of Abdul Rashid Ibrahim Mansuri Vs. State of Gujarat - 2000 (2)

6. The evidence of Mr. Khant, the then PSI, who received the information is recorded at Exhibit 19. A perusal thereof reveals that after the receipt of the information he did not note down the same in writing and even did not send the copy thereof to the superior officer. On receipt of the information he summoned the panchas and apprising them about the raid to be carried out, he with the panchas and the members of the raiding party rushed to the ST Bus Stand for arresting the respondent if at all found in possession of the opium ignoring the mandate of Sec.42. His evidence makes it clear that he did not even post any entry in the relevant register of the police station. Though he received the information in advance, Mr. Khant, has however not preferred to undergo the formalities as mandated by Section 42 of the Act. Non-compliance of Sec. 42 therefore in this case vitiate the search and recovery made prejudiced the respondent. Consequently, the respondent was entitled to acquittal. The learned Additional Sessions Judge, in view of the fact, was perfectly right in acquitting the respondent. We, for the reasons stated above, see no justification to interfere with the order of acquittal.

7. In the result, the appeal, being devoid of merits is liable to be dismissed, and, is hereby dismissed.

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